IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3230 OF 2006

IN

APPEAL (LODGING)NO. 776 OF 2006

IN

WRIT PETITION NO.1372 OF 2006

Abdul Khaliq ... Appellant
(Orig.Petitioner)

Vs.

M/s. Hashmat & Co. ... Respondent
(Orig.Respondent)

Mr. Deshmukh i/b. Mr. S.N.Deshpande for the appellant.
Mr. V.P.Vaidya for respondent.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.
DATE : 23rd July, 2007.

P.C.

1. Assuming that sufficient cause has been shown for condonation of delay in filing the appeal, we do not

find any merit in the appeal.

2. We have to regretfully note that the learned Counsel arguing the appeal was, from the very beginning, unfair to the Court. The departmental enquiry was held against several employees. Out of that, two petitions arose, being Writ Petition Nos.1372 of 2006 and 1338 of 2006. The learned Single Judge who passed the order in Writ Petition No.1372 of 2006, which is impugned in this Appeal, has observed that the facts are identical except that one charge of habitual late attendance is not levelled against the petitioner in W.P. No.1338/2006 and adopting the reasons given by him in his order passed in W.P.No.1338/2006, he dismissed the Writ Petition No.1372/2006. Therefore, before beginning argument, it was expected of the Senior Counsel appearing for the appellant that first thing he will point out to the Court is that against the order passed by the learned Single Judge in W.P. No.1338/2006, Appeal No.714 of 2006 was filed in this Court and the Division Bench of this Court, after considering that Appeal on merits, after considering all contentions raised, has dismissed the Appeal by an order dated 3.10.2006. Without pointing out that, the learned Counsel for the appellant went on arguing the appeal on merits raising the same contentions which were urged in Appeal No.714 of 2006. After some time, we pointed out

to the learned Counsel that we have understood his submission and that we will deal with it, but he continued arguing the matter thus consuming more 45 minutes of the Court's time despite being repeatedly told that he was repeating the same argument and that it is not necessary for him to argue further because we have understood him and we wanted to hear the learned Counsel appearing for the respondent still he continued to argue. Thus, the learned Counsel for the appellant went on arguing preventing the respondent's Counsel from getting up. When we called upon the learned Counsel for respondents to reply, the first thing the respondent's lawyer pointed out was the judgment of the Appeal Court in Appeal No.714 of 2006.

3. One departmental enquiry was held of the employee who is appellant in this Appeal and the employee who was appellant in Appeal No.714/2006. The charges were also identical, except for the charge of habitual late attendance. The entire controversy raised in this appeal is covered by the Judgment of the Division Bench in Appeal No.714 of 2006. After having heard learned Counsel for both the sides, we see no reason to take a different view from the one taken by the Division Bench in Appeal No.714 of 2006.

Therefore, the Appeal and the Motion are

disposed of.

4. As noted above, we have to observe that the learned Counsel appearing for the appellant has wasted considerable time of the Court. Therefore, in our opinion, heavy exemplary costs have to be imposed. However, considering that the appellant is a worker and he is already dismissed from service, we direct the appellant to pay Rs.5,000/- as and by way of costs to the respondent.

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(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)